Supreme Court of the United States.

No. 535.—October Term, 1903.

George W. Beavers, Appellant,
vs.
William Henkel, United States Marshal in and for the Southern District of New York.

Appeal from the Circuit Court of the United States for the Southern District of New York

[April 11, 1904.]

On July 23, 1903, a grand jury of the Circuit Court of the United States for the Eastern District of New York found and returned an indictment under section 1781, R. S., charging George W. Beavers, an officer of the government of the United States, with having received money for procuring a contract with the government for the Edward J. Brandt-Dent Company. A warrant for the arrest of the official was issued to the marshal of the district and returned "not found." Thereupon a complaint supported by affidavit was filed in the District Court of the United States for the Southern District of New York, alleging the finding of the indictment, the issue of the warrant, the return "not found," and that Beavers was within the Southern District of New York. Upon this complaint a warrant was issued, Beavers was arrested and brought before a commissioner. A hearing was had before that officer, and upon his report the District Judge of the Southern District signed an order of removal to the Eastern District. Before this order could be executed Beavers presented his petition to the Circuit Court of the United States for the Southern District of New York for a writ of *habeas corpus*. After a hearing thereon the application for discharge was denied, and thereupon an appeal was taken to this court.

Mr. Justice Brewer delivered the opinion of the Court.

This case turns upon the efficacy of an indictment in removal proceedings. The government offered no other evidence of petitioner's guilt. His counsel state in their brief:

"The controlling questions to be discussed on this appeal are whether the indictment offered in evidence before the commissioner can be regarded as conclusive evidence against the accused of the facts therein alleged; whether it was competent at all as evidence of such facts, and whether such indictment was entitled to be accorded any probative force whatever."

At the outset it is well to note that this is not a case of extradition. There was no proposed surrender of petitioner by the United States to the

jurisdiction of a foreign nation, no abandonment of the duty of protection which the nation owes to all within its territory. There was not even the qualified extradition which arises when one State within the Union surrenders to another an alleged fugitive from its justice. There was simply an effort on the part of the United States to subject a citizen found within its territory to trial before one of its own courts. The locality in which an offence is alleged to have been committed determines under the Constitution and laws the place and court of trial. And the question is what steps are necessary to bring the alleged offender to that place and before that court.

Obviously very different considerations are applicable to the two cases. In an extradition the nation surrendering relies for future protection of the alleged offender upon the good faith of the nation to which the surrender is made, while here the full protecting power of the United States is continued after the removal from the place of arrest to the place of trial. It may be conceded that no such removal should be summarily and arbitrarily made. There are risks and burdens attending it which ought not to be needlessly cast upon any individual. These may not be serious in a removal from New York to Brooklyn, but might be if the removal was from San Francisco to New York. And statutory provisions must be interpreted in the light of all that may be done under them. We must never forget that in all controversies, civil or criminal, between the government and an individual the latter is entitled to reasonable protection. Such seems to have been the purpose of Congress in enacting section 1014, R. S., which requires that the order of removal be issued by the judge of the district in which the defendant is arrested. In other words, the removal is made a judicial rather than a mere ministerial act.

In the light of these considerations we pass to an inquiry into the special matters here presented. Article 5 of the amendments to the Constitution provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger."

While many States in the exercise of their undoubted sovereignty, (*Hurtado* v. *California*, 110 U. S. 516,) have provided for trials of criminal offences upon information filed by the prosecuting officer and without any previous inquiry or action by a grand jury, the national Constitution, in its solicitude for the protection of the individual, requires an indictment as a prerequisite to a trial. The grand jury is a body known to the common law, to which is committed the duty of inquiring whether there be probable cause to believe the defendant guilty of the offense charged. Blackstone says (vol. 4, p. 303):

"This grand jury are previously instructed in the articles of their inquiry, by a charge from the judge who presides upon the bench. They then withdraw, to sit and receive indictments, which are preferred to them in the name of the king, but at the suit of any private prosecutor; and they are only to hear evidence on behalf of the prosecution; for the finding of an indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to inquire, upon their oaths, whether there be sufficient cause to call upon the party to answer it. A grand jury, however, ought to be thoroughly persuaded of the truth of an indictment, so far as their evidence goes; and not to rest satisfied merely with remote probabilites: a doctrine that might be applied to very oppressive purposes."

The thought is that no one shall be subjected to the burden and expense of a trial until there has been a prior inquiry and adjudication by a responsible tribunal that there is probable cause to believe him guilty. But the Constitution does not require two such inquiries and adjudications. The government, having once satisfied the provision for an inquiry and obtained an adjudication by the proper tribunal of the existence of probable cause, ought to be able without further litigation concerning that fact to bring the party charged into court for trial. The existence of probable cause is not made more certain by two inquiries and two indictments. Within the spirit of the rule of giving full effect to the records and judicial proceedings of other courts, an indictment, found by the proper grand jury, should be accepted everywhere through the United States as at least *prima facie* evidence of the existence of probable cause. And the place where such inquiry must be had and the decision of a grand jury obtained is the locality in which by the Constitution and laws the final trial must be had.

While the indictment is *prima facie* evidence it is urged that there are substantial reasons why it should not be regarded as conclusive. An investigation before the grand jury, it is said, is generally *ex parte*—although sometimes witnesses in behalf of the defendant are heard by it—and the conclusion of such *ex parte* enquiry ought not to preclude the defendant from every defence, even the one that he was never within the State or district in which the crime is charged to have been committed, or authorize the government to summarily arrest him wherever he may be found, transport him perhaps far away from his home and subject him among strangers to the difficulties and expense of making his defence. It is unnecessary to definitely determine this question. It is sufficient for this case to decide, as we do, that the indictment is *prima facie* evidence of the existence of probable cause. This is not in conflict with the views expressed by this court in *Greene* v. *Henkel*, (183 U. S. 249.) There it appeared that after an indictment had been found by a grand jury of the United States District Court for the Southern District of Georgia the defendants were arrested in New York; that on a hearing before the commissioner he ruled that the indictment was conclusive evidence of the existence of probable cause, and declined to hear any testimony offered by

the defendants. Upon an application to the district judge in New York for a removal he held that the indictment was not conclusive, and sent the case back to the commissioner. Thereupon testimony was offered before the commissioner, who found that there was probable cause to believe the defendant guilty, and upon his report the district judge ordered a removal. We held that under the circumstances it was not necessary to determine the sufficiency of the indictment as evidence of the existence of probable cause, and that as the district judge found that probable cause was shown, it was enough to justify a removal.

It is further contended that—

"There was no jurisdiction to apprehend the accused, because the complaint on removal was jurisdictionally defective, in that it was made entirely upon information, without alleging a sufficient or competent source of the affiant's information and ground for his belief, and without assigning any reason why the affidavit of the person or persons having knowledge of the facts alleged was not secured."

This contention cannot be sustained. The complaint alleges on information and belief that Beavers was an officer of the government of the United States in the office of the First Assistant Postmaster General of the United States; that as such officer he was charged with the consideration of allowances for expenditures and with the procuring of contracts with and from persons proposing to furnish supplies to the said Post Office Department; that he made a fraudulent agreement with the Edward J. Brandt-Dent Company for the purchase of automatic cashiers for the Post Office Department and received pay therefor; that an indictment had been found by the grand jury of the Eastern District, a warrant issued and returned "not found," and that the defendant was within the Southern District of New York. This complaint was supported by affidavit, in which it was said:

"Deponent further says that the sources of his information are the official documents with reference to the making of the said contract and the said transactions on file in the records of the United States of America and in the Post Office Department thereof and letters and communications from the Edward J. Brandt-Dent Company with reference to the said contract, and from the indictment, a certified copy of which is referred to in said affidavit as Exhibit A, and the bench warrant therein referred to as Exhibit B, and from personal conversations with the parties who had the various transactions with the said George W. Beavers in relation thereto; and that his information as to the whereabouts of the said George W. Beavers is derived from a conversation had with the said George W. Beavers in said Southern District of New York in the past few days and from the certificate of the United States marshal for the Eastern District of New York, endorsed on said warrant."

This disclosure of the sources of information was sufficient. In *Rice* v. *Ames*, (180 U. S. 371,) a case of extradition to a foreign county in which the complaint was made upon information and belief, we said, (p. 375):

"If the officer of the foreign government has no personal knowledge of the facts, he may with entire propriety make the complaint upon information and belief, stating the sources of his information and the grounds of his belief, and annexing to the complaint a properly certified copy of any indictment or equivalent proceeding, which may have been found in the foreign country, or a copy of the depositions of witnesses having actual knowledge of the facts, taken under the treaty and act of Congress. This will afford ample authority to the commissioner for issuing the warrant."

The indictment alone was, as we have seen, a showing of probable cause sufficient to justify the issue of a warrant.

With reference to other questions we remark that, so far as respects technical objections, the sufficiency of the indictment is to be determined by the court in which it was found and is not a matter of inquiry in removal proceedings, (*Greene* v. *Henkel, supra;*) that the defendant has there no right to an investigation of the proceedings before the grand jury, or an inquiry concerning what testimony was presented to or what witnesses were heard by that body. In other words, he may not impeach an indictment by evidence tending to show that the grand jury did not have testimony before it sufficient to justify its action. Such seems to have been the purpose of most, if not all, of the testimony offered by the petitioner in this case. As his counsel stated during the progress of the examination before the commissioner: "We hold that we have an absolute right in a proper proceeding to expose what took place before the grand jury. We don't do it at all in order to make a disclosure of what transpired before a secret body. We do propose to show what transpired before that grand jury so as to show that there was not any evidence upon which that body could have found an indictment, a legal, valid, lawful indictment, against George W. Beavers. We have no other purpose in calling this witness or any other witness who appeared before the grand jury." But the sufficiency of an indictment as evidence of probable cause in removal proceedings cannot be impeached (if impeachable at all) in any such manner. Neither can a defendant in this way ascertain what testimony the government may have against him and thus prepare the way for his defence. There are no other questions that seem to us to require notice.

We see no error in the record, and the judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.